

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20/08/2004

CORAM

THE HONOURABLE MR. JUSTICE P.K. MISRA

AND

THE HONOURABLE MR. JUSTICE F.M. IBRAHIM KALIFULLA

WRIT PETITION NO.3131 OF 2003

1. State of Tamil Nadu,
represented by the Secretary,
Ministry of Home,
Fort St. George, Chennai 9.

2. The Director General of Police,
Chennai 4.

3. The Chairman,
Tamilnadu Uniformed Services
Recruitment Board,
No.807, II Floor,
Anna Salai, Chennai 2. .. Petitioners

-Vs-

1. A. Elangovan,
S/o. A. Iyyasamy
Gr.I. PC 7518, Central Crime Branch,
Egmore, Chennai 8.

2. The Registrar,
Tamilnadu Administrative Tribunal,
Chennai. .. Respondents
Petition filed under Article 226 of the Constitution of India for the
issuance of Writ of Certiorari as stated therein.

For Petitioners : Mr.P.S. Sivashanmuga Sundaram

For Respondents : Mr.G. Thangavel

:JUDGMENT

The present writ petition has been filed by the State of Tamil Nadu,
represented by its Secretary, Home Department, the Director General of Police
and the Chairman of Tamilnadu Uniformed Services Recruitment Board against the
order dated 11.7.2002 passed by the Tamil Nadu Administrative Tribunal in

O.A.No.6443 of 1998 allowing the said application filed by the Respondent No.1 and directing the present petitioners to give posting to the present Respondent No.1 as Sub-Inspector of Police. 2. The facts giving rise to the present writ petition are as follows :The present Respondent No.1 was serving under the present petitioners as Constable and in course of time, he became Grade-I Constable. The post of Sub-Inspector of Police is filled up by direct recruitment and also by promotion. Initially, the Head Constables were eligible to be promoted, but subsequently, the State Government introduced a scheme under which Head Constables and Grade-I constables become eligible to be appointed as Sub-Inspector on the basis of selection on merit. Such principle has been laid down by the Government in G.O.Ms. No.1054 Home (Police.III) Department dated 13.7.1995. Such G.O., provided that direct recruitment of Sub-Inspectors of Police should be filled up at 80% from open market and 20% from serving police personnel in all three categories. It was provided :3. The recruitment shall be made by Tamil Nadu Uniformed Services Recruitment Board against this 20% reservation in each year of direct recruitment from among the Police Constables and Head Constables and their equivalent rank in Armed Reserve and Tamil Nadu Special Police who are graduates and who have completed 5 years of service. The candidates should have a clean record without any punishments, other than the minor punishments of blackmark, reprimand or censure, in the 5 years preceding the date of notification of selectio.

4. The Tamil Nadu Uniformed Services Recruitment Board shall follow the prescribed norms and procedures adopted in the direct recruitment selection of Sub-Inspectors such as physical measurements, physical efficiency test, written test, viva voce etc., The inter-se- seniority of the candidates selected against this recruitment would be above those selected in the open competition in that year.

3. For the year 1994-95, 270 vacancies were to be filled up under 2 0% quota meant for departmental candidates and a selection was held on 17.11.1995 and 18.11.1995. 2191 candidates had participated in the said selection including the present Respondent No.1, out of which 1 668 candidates got qualified in the written test which was subsequently conducted on 20.11.1995. Even though the present Respondent No.1 had secured more than 35% marks in the written test, he was not called up for viva-voce test and thereafter the selection process continued in respect of top 625 candidates.

4. The present Respondent No.1 filed O.A.No.6443 of 1998, wherein it was contended that since prescription of minimum marks in the written test was not made known in advance, the candidates who have participated in the written test should have been called for the interview by the respondents. It is further indicated that several vacancies were still available and the applicant should have been recruited against such vacant post

5. The Tribunal primarily relying upon its earlier decision in O.A.Nos.7468 to 7479 of 1996 dated 30.12.1996, referred to Rule 3(d) of Special Rules of Tamil Nadu Police Subordinates Service and observed that such provision did not contemplate any stipulation that the candidate should get minimum marks before he is allowed to participate in the drill test and viva-voce

examination. On the basis of the aforesaid observation, the Tribunal gave a direction for appointment of the present Respondent No.1.

6. In this writ petition, the main contention of the petitioners is to the effect that the Tribunal has erroneously applied the provisions contained in Rule 3(d) of the Special Rules of Tamil Nadu Police Subordinates Service Rules which is applicable to the case of promotion to the post of Sub-Inspector from the post of Head Constable. It is contended that on the other hand the procedure relating to recruitment from among the service candidates against 20% quota, as envisaged in G.O.Ms.No.1054 dated 13.7.1995, being different, the order of the Tribunal cannot be sustained.

7. We have already extracted paragraph 4 of G.O.Ms.No.1054, which clearly indicates that the Tamil Nadu Uniformed Services Recruitment Board shall follow the prescribed norms and procedures adopted in the direct recruitment selection of Sub-Inspectors. G.O.Ms.No.603 (P & AR) dated 12.6.1985 lays down the procedure for such direct recruitment. As per the aforesaid G.O., the State Services constitute technical and non-technical posts. Tamil Nadu Police Service comes under Non-Technical category. Paragraph 6 of the aforesaid G.O., prescribes that when direct recruitment has to be made to the services, it shall be made on the basis of a competitive examination comprising a written test and an oral test. Under paragraph 7 it has been prescribed that for the purpose of the examination, the services classified as non-technical had been grouped in different Groups and the Tamil Nadu Police Service comes under Group-I. As per paragraph 8(a), in the case of services included in Group I, the competitive examination will comprise a written test and an oral test of the standard mentioned in Annexure-I(b). Annexure-I relates to Group I Services concerning Bachelor Degree Standard prescribes different subjects.

8. As per the notification dated 6.7.1998, certain amendments were made to the Special Rules for Tamil Nadu Police Subordinate Service with retrospective effect from 13.7.1995. As per the proceedings of the Director General of Police and the Chairman of Tamil Nadu Uniformed Services Recruitment Board dated 31.12.1993, it has been indicated in paragraph 7 that the qualifying marks for the Written Test has been prescribed as 35%. As per paragraph 9 of G.O.Ms.No.603 dated 12.6.1985 it is indicated that standard of the examinations for each group and the minimum number of marks to be obtained at the written test to qualify for admission to the oral test shall be determined by the Commission on each occasion. It is obvious that in the proceedings dated 31.12.1993 prescribing 35% as the minimum marks is pursuant to the aforesaid provision in G.O.Ms.No.603 dated 12.6.1985. The aforesaid G.O., was subsequently amended on 25.11.1993. The existing paragraph 9 was re-numbered as 9-(a) and the following paragraph was inserted :-

9. In respect of Group-I services, the examination shall comprise of two successive stages, (1) Preliminary Examination (Objective type) for the selection of candidates for Main examination; and (2) Main Examination (Written and Interview) for selection of candidates for various services and posts.

The Preliminary Examination shall consist of two papers of Objective type and would carry a maximum of 450 marks. This examination is meant to serve as a screening test only and the marks obtained in the Preliminary Examination by the candidates shall not be accounted for their final merit. The number of candidates to be admitted to the main examination shall be exactly 10 times the total number of vacancies to be filled in the year in the various services, having regard to the rule of reservation of appointments. Only those candidates declared by the Commission to have qualified in the Preliminary Examination in a year will be eligible for admission to the main written examination of that year. (Subject to other eligibilities).

The Main examination will consist of a written examination and an Interview test. the written examination will consist of six papers of conventional essay type, each carrying 300 marks.

If the total number of vacancies is five and above, the number of candidates to be admitted to the Oral test shall be exactly two times the number of candidates to be recruited having regard to the rule of reservation of appointments wherever it applies, based on the marks obtained at the written test. when the total number of vacancies is four and below the Commission shall call candidates for interview, three times of the number of vacancies to be filled; subject to the rule of reservation of appointments, wherever it applies. The final selection shall be made with reference to the total marks at the written test and the oral test taken together, applying the rule of reservation of appointments wherever it applies. Marks obtained by the candidates in the main examination, both written and oral, would determine their final ranking. Candidates will be allotted to the various services keeping in view of their ranks in the examination and preference expressed by them for various services and posts.□ (Emphasis added)

9. In the aforesaid background relating to various orders/rules, it has been submitted by the learned counsel for the petitioners that since total number of vacancies were 270, the Selection Board shortlisted twice the number of candidates for the purpose of oral test and all those candidates who have secured marks equal to the marks secured by the 540th rank-holder were called and that is how 625 candidates were called in view of the clear direction contained in paragraph 9 of the G.O., as amended and the Tribunal without considering these aspects had erroneously applied Rule 3(d) of the Special Rules of Tamil Nadu Police Subordinate Service.

10. The aforesaid submission made on behalf of the petitioners appears to be sustainable and borne out by records. The procedure contemplated under G.O.Ms.No.603 as amended on 25.11.1993 has to be followed along with the selection procedure laid down by the Selection Board. In a given case, number of candidates to be called would obviously depend upon number of vacancies. If the vacancies are more than five, twice the number of candidates are called to the interview, subject to, of course to the minimum of the marks to be secured in the written examination. In the present case, the respondent No.1 had secured the prescribed minimum marks in the written examination, but the rank of the Respondent No.1 was far below 625. Therefore, there was every justification in not calling him for the oral test.

11. The Tribunal has relied upon Rule 3(d) and observed that there was no minimum marks prescribed. The Tribunal omitted to consider the most relevant factor, namely, the selection was not by promotion from among the Head Constables in which case Rule 3(d) would be applicable, but selection was on the basis of G.O.Ms.No.1054 dated 13.7.1995 , which clearly indicated the procedure relating to direct recruitment should be followed. Without keeping in mind the aforesaid significant difference in the methods of selection, the Tribunal appears to have mechanically applied the principle enumerated in Rule 3(d) of the of the Special Rules of the Tamil Nadu Police Subordinate Service. The order passed by the Tribunal, therefore, cannot be sustained.

12. Learned counsel appearing for the Respondent No.1 has however contended that many of the posts in the reserved category are lying vacant and as per the policy decision of the Government, those posts should be filled up even by relaxing the method of recruitment. For the aforesaid purpose, he has placed reliance G.O.Ms.No.91 (Adi Dravidar and Tribal Welfare Department) dated 28.11.2001. We have gone through the aforesaid G.O., and we do not find anything which strictly supports the case of the present Respondent No.1. The aforesaid G.O., has been issued in November, 2001 and obviously does not have any applicability to the recruitment which was already over. There is no doubt that such G.O., would be applicable to the recruitment in future and the respondent No.1 may receive the benefit under such G.O., in future, if such contingency arises. 13. Learned counsel for the Respondent No.1 has also placed reliance upon a decision of the Tribunal in O.A.Nos.7468 to 7479 of 1996 as has been done by the Tribunal in the present impugned order. As already indicated, the Rule 3(d) of the Special Rules of Tamil Nadu Police Subordinate Service relates to promotion to the post of Sub- Inspector from the post of Head Constable. The ratio of the said decision would not be applicable at all to the case of selection by the process of written test as contemplated under G.O.Ms.No.1054 read with G.O. Ms.No.603. The Tribunal has obviously committed a mistake by placing reliance upon the decision which has no application to the case of direct recruitment by the process of selection from among the service candidates.

14. In the result, the writ petition is allowed and the order passed by the Tribunal dated 11.7.2002 in O.A.NO.6443 of 1998 is quashed. No costs.

Index : Yes

Internet: Yes

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To

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